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PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th August 1955

S.R.O. 1805.—Whereas the election of Shri Davindar Singh, S/o Shri Ghamdoor Singh, Village and P.O. Charik, Tehsil Moga, District Ferozepur and Shri Mukhtiar Singh S/o Shri Bhagat Singh, village and P.O. Dharamkot, Tehsil Zira, District Ferozepur, as members of the Legislative Assembly of the State of Punjab, from the Moga-Dharamkot (double member) constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Rattan Singh, S/o Shri Sundar Singh C/o Kotkapura Transport Co., Ltd., Moga;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said, Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, FEROZEPUR

Hans Raj Khanna,—*Chairman.*

Mohindra Singh Pannun,—*Member.*

Maharaj Kishore,—*Member.*

ELECTION PETITION No. 2 OF 1954

Shri Rattan Singh, son of Shri Sundar Singh c/o Kot Kapura Transport Co., Ltd., Moga, a validly nominated candidate for election in the Moga Dharamkot Constituency of the Punjab Legislative Assembly at the bye-election held in 1953.—*Petitioner.*

versus

1. Shri Davindar Singh s/o Shri Ghamdoor Singh, village and P.O. Chirak, Tahsil Moga, District Ferozepur;
2. Shri Mukhtar Singh s/o Shri Bhagat Singh, village and P.O. Dharamkot, Tahsil Zira, District Ferozepur;
3. Shri Sucha Singh s/o Shri Mangta Singh C/o Messrs. Sucha Singh Rajindar Singh, Commission Agents, Moga Mandi;
4. Shri Harwant Singh s/o Shri Vir Singh, village and P.O. Kassoana, Tahsil Zira, District Ferozepur;

(1833)

5. Shri Mehar Singh, s/o Shri Harnam Singh, village and P.O. Jhandiana P.S. and Tahsil Moga;
 6. Shri Ram Nath s/o Shri Bhagat Ram, Main Bazar, Moga.
 7. Shri Puran Singh s/o Shri Narain Singh, Patti Roopa, Moga Mahla Singh.
 8. Shri Nachhattar Singh s/o Shri Ujagar Singh, Municipal Commissioner, Moga Mahla Singh;
 9. Shri Ajit Singh s/o Shri Rattan Singh, village Mansoor-dewa, P.O. and Tehsil Zira.
 10. Shri Massa s/o Shri Jhanda, village and P.O. Ghall Kalan, Tahsil Moga.
 11. Shri Basant Singh s/o Shri Guralpal Singh, Basant Bhawan, Civil Lines, Moga;
 12. Shri Bakhtawar Singh s/o Shri Jogirdar Singh, Managing Director, Pepsu Transport Co., Ltd., Moga.—*Respondents.*
- Shri Rattan Singh Vs: Shri Davindar Singh and others.

ORDER

Moga Dharamkot is a Double-Member Constituency of the Punjab Legislative Assembly, one of its seats being reserved for members of the Scheduled Castes. During the General Elections held in 1951-52 Shri Davindar Singh, respondent No. 1, and Shri Mukhtar Singh, respondent No. 2, were elected to the Assembly from that Constituency. Shri Davindar Singh was elected from the General seat and Shri Mukhtar Singh from the seat reserved for the Scheduled Castes. Shri Rattan Singh petitioner, who was one of the candidates in that election, filed an election petition challenging the election of respondents Nos. 1 and 2. The Election Tribunal Ludhiana as per order, dated 24th June 1952, which has been published in the Punjab Government Gazette and has been marked as P.1, declared the election of respondents Nos. 1 and 2 to be wholly void. A bye-election was held in August-September 1953, in which again Shri Davindar Singh and Shri Mukhtar Singh respondents were respectively declared elected from the General seat and the seat reserved for the Scheduled Castes. Shri Rattan Singh petitioner, who was a candidate in the bye-election also, has again filed the present petition to challenge the election of respondents Nos. 1 and 2.

2. The ground urged for setting aside the election of respondents Nos. 1 and 2 is that Shri Mukhtar Singh, respondent No. 2, in his declaration attached to his nomination paper filed in the General Election held in 1951-52 stated that he was a Balmiki by caste. He also deposed in the previous election petition before the Election Tribunal, Ludhiana, that he was a Balmiki Hindu and did not believe in Sikhism or the ten Gurus. The aforesaid Tribunal held that Shri Mukhtar Singh was a Balmiki Hindu and the contention of the petitioner in the previous petition that Shri Mukhtar Singh was a Balmiki Sikh was not accepted. In his declaration, however, in the nomination paper filed by Shri Mukhtar Singh in the bye-election, he declared himself to be a Mazhabi by caste and Sikh by religion. The petitioner raised an objection before the Returning Officer that Shri Mukhtar Singh was a Balmiki Sikh and that his declaration with regard to his caste was false and that, therefore, he was not qualified to be a candidate from the seat reserved for the scheduled castes. The Returning Officer accepted the nomination paper of Shri Mukhtar Singh despite the objection of the petitioner. An order, however, it is alleged, with regard to the prosecution of Shri Mukhtar Singh under sections 182, 192 and 199, I.P.C., was made for making a false declaration. According to the petitioner, the acceptance of the nomination papers of Shri Mukhtar Singh, respondent No. 2, was in the above circumstances, improper. It was also alleged that the result of the bye-election had been materially affected by the improper rejection of the nomination of Shri Massa (also described as Shri Massa Singh), respondent No. 10, on a technical ground that the latter's serial number on the voters' list did not tally with the number entered in the nomination papers, although his identity was not in doubt.

3. The petition was contested by respondents Nos. 1 and 2, who denied the grounds urged by the petitioner for setting aside the election.

4. An application was put in by the petitioner on 3rd July 1954 seeking to amend the allegations made in the petition with regard to the rejection of the nomination papers of Shri Massa Singh respondent. The aforesaid application was rejected by the Tribunal as per detailed order dated 6th August 1954 (Annexure A). The following preliminary issues were framed in view of certain preliminary objections of the respondents:—

- (i) Does the petition not comply with the provisions of section 83 of the Representation of the People Act and as such is liable to be dismissed

for the reasons stated in para 1(a) of the preliminary objections in the written statement of respondent No. 2?

(ii) Is the petition not in order on the ground that it does not allege disqualification, want of qualification or defect in nomination papers of respondent No. 2?

(iii) Does the petition not disclose a cause of action?

(iv) Are the particulars of para 8 insufficient and vague?

5. The aforesaid preliminary issues were decided as per order, dated 30th October 1954 (Annexure B).

6. After orders on the preliminary issues had been pronounced, S. Nachittar Singh, respondent No. 8, who was one of the candidates at the election and who in spite of service, had not put in appearance before the Tribunal earlier, filed an application in which he stated that he could not take part in the proceedings earlier, because of family affairs and other unavoidable circumstances. He also put in a written statement, in the course of which he admitted all the allegations of the petitioner except with regard to the rejection of the nomination papers of Shri Massa Singh, respondent No. 10. In this respect Shri Nachittar Singh alleged that the nomination papers of Shri Massa Singh had been rejected on the ground that the serial numbers of his proposer and seconder, as given in the nomination papers, were not available in the electoral roll then in force.

7. The statement of Shri Mukhtar Singh, respondent No. 2, was recorded on 3rd December 1954, in the course of which he stated that at the time of the General Elections in 1951-52 he was a Balmiki Hindu and filed his nomination papers as such. At the time of the bye-election, he was a Mazhabi Sikh and filed his nomination papers as such. According to Shri Mukhtar Singh, he took Amrit in the summer of 1953 in Gurdwara Badhowal and thus became a Mazhabi Sikh. He also added that he was originally a Chuhra but after taking Amrit, he became a Mazhabi Sikh. The following issues were then framed:—

1. Whether the nomination papers of Shri Mukhtar Singh respondent No. 2, were improperly accepted for the reasons given in para. 7 of the petition and what is its effect?
2. Were the nomination papers of Shri Massa Singh, respondent No. 10, improperly rejected for the reasons given in para 8 of the petition?
3. If issue No. 2 be found in favour of the petitioner, has the result of the election been not materially affected?
4. Can respondent No. 8 urge a new ground for setting aside the election, which has not been originally taken in the petition?
5. If issue No. 4 be found in favour of respondent No. 8, were the nomination papers of Shri Massa Singh, respondent No. 10, improperly rejected on the grounds urged in para 8 of the written statement of respondent No. 8?
6. Can the petitioner lead evidence and claim relief on grounds, which have not been originally stated in the petition and for which the application of the petitioner for amendment has been refused?

8. Issue No. 6 was framed in view of the contention of the learned counsel for the petitioner that despite the fact that the petitioner's application for amendment had been rejected, the petitioner was still entitled to lead evidence to show that the nomination papers of Shri Massa Singh respondent were improperly rejected on the grounds stated in the application for amendment of the petition. Issues Nos. 4 and 6 were decided by the Tribunal, as per detailed order, dated 31st December 1954 (Annexure C). Issue No. 4 was decided against Nachittar Singh, respondent No. 3, while issue No. 6 was decided against the petitioner. Issue No. 5 in view of our finding on issue No. 4 became redundant. No arguments have been addressed before us on issue No. 2 in view of our orders, dated 6th August 1954 and 31st December 1954 and in view of the fact that, according to the petitioner's subsequent case, para 8 of the petition does not contain correct facts. Issue No. 2 is, accordingly, decided against the petitioner. Issue No. 3 in view of our finding on issue No. 2, becomes redundant. The only issue, on which parties have led evidence and have addressed arguments before the Tribunal, is issue No. 1 and I give my finding on that issue as under:—

9. In order to appreciate the point involved in the issue, it would be useful to refer to the different legal provisions on the subject. Under Article 341 of the Constitution of India, the President has issued The Constitution (Scheduled

Castes) Order 1950. The President has by this Order declared 34 castes, who shall be deemed to be members of the Scheduled Caste for the purposes of the Punjab. The list mentions Balmikis or *Chuhra*s at No. 7 and Mazhabis at No. 20 as being members of the Scheduled Castes. The Order also specifies that no person shall be deemed to be a member of the Scheduled Castes unless he professes Hindu religion. A proviso, however, has been added that in the case of Mazhabis and three other castes, namely, Ramdasi, Kabirpanthi and Sikligar, in the Punjab and Pepsu, they shall be deemed to be members of the Scheduled Caste, whether they are Hindus or Sikhs. Section 5 of the Representation of People Act provides that a person shall not be qualified to be chosen to fill a seat in the case of seats reserved for the Scheduled Castes, unless he be a member of those castes.

10. Shri Mukhtar Singh, respondent No. 2, described himself to be a Balmiki in the nomination papers in the General Elections. In the previous election petition the petitioner alleged that Shri Mukhtar Singh was a Balmiki Sikh and as Balmiki Sikhs were not members of Scheduled Caste, Shri Mukhtar Singh was not entitled to seek election from the reserved seat. Shri Mukhtar Singh then stated before the Ludhiana Tribunal on 27th March 1953 in his statement, copy of which is Exh: P. 6, that he was a Balmiki Hindu and a follower of Rishi Balmik. He was not a Sikh and did not believe in the ten Gurus. He also added that he was not a Mazhabi Sikh. The Tribunal in view of the declaration made by Shri Mukhtar Singh at the time of the nomination and his statement before the Tribunal held that he was a Balmiki Hindu. Shri Mukhtar Singh, however, described himself as a Mazhabi Sikh in his declaration in the nomination papers filed at the time of the bye-election held in August-September 1953. Exhs. P. 3 and P. 4 are the copies of those nomination papers dated 17th August 1953. It is contended on behalf of the petitioner that as Shri Mukhtar Singh was a Balmiki and had described himself to be a Sikh in his nomination papers filed at the time of the bye-election and as Balmiki Sikhs are not members of the Scheduled Caste; therefore, Shri Mukhtar Singh could not seek election from the seat reserved for the Scheduled Caste and consequently his nomination papers were improperly accepted for that seat. Shri Mukhtar Singh's position is that in the summer of 1953 sometime before he filed his nomination papers in the bye-election, he took *Amrit* and thus became converted to Sikhism. It is further urged that all *Chuhra*s or Balmikis on embracing Sikhism are styled as Mazhabis and as Mazhabi Sikhs are members of the Scheduled Caste; therefore, Shri Mukhtar Singh's nomination papers were properly accepted.

11. Considerable arguments have been addressed before us by the parties' counsel on the point whether Hindu *Chuhra*s or Balmikis on conversion to Sikhism are styled Mazhabis. The argument of the learned counsel for the petitioner is that Mazhabis and Balmikis are two distinct castes, because they have been classified separately in the President's Order, referred to above. It is also urged that the President's Order contemplates that there are Hindu Mazhabis as well as Sikh Mazhabis. According to the learned counsel, it is only the Hindu Mazhabis and not other Hindu Scheduled Castes, who on embracing Sikhism can be described as Mazhabi Sikhs. In Order to decide this question, in my opinion, an attempt should be made to find out the origin of Sikh Mazhabis. In this connection I find that it has been stated by R.W.2 Gyani Ravel Singh, Secretary of Shiromani Gurdwara Parbandhak Committee, that a *Chuhra* or a Balmiki or an *Ad-dharmi* on being given *Amrit* is known as a Mazhabi Sikh. In the "Glossary of the Tribes and Castes of the Punjab and North West Frontier Province", 1914 Edition, which was based on the Census Report for the Punjab, 1883 and 1892, it is stated on page 75 as under:—

"Mazbi, or more correctly Mazhabi, is a *Chuhra* who has become a Sikh. Sikh *Chuhra*s are almost confined to the Districts and States immediately east and south-east of Lahore, which form the centre of Sikhism. Mazbi means nothing more than a member of the scavenger class converted to Sikhism".

12. During the Census of India in 1891, a report on the Punjab and its Feudatories was issued by E. D. MacLagan, I.C.S., Superintendent of the Census. On page 202 of the aforesaid volume it is laid down as under:—

"Quite apart from those sects of the real *Chuhra* religion are the sects which they have returned to show their participation in one of the greater religions of the country, and these vary generally with the religion of the village in which the sweepers live. When the sweepers have adopted the Sikh faith, they are known as Mazhabis, and are particularly scrupulous on all matters of religious practice, but are still kept at a distance by most Sikhs of other castes".

13. In the Cunningham's History of the Sikhs, 1955 Edition the foot-note on page 64 reads as under:—

"*Chuhrras* or men of the sweeper caste, brought away the remains of Tegh Bahadur from Delhi, as has been mentioned (ante, pp. 59-60, note 2). Many of that despised, but no oppressed race, have adopted the Sikh faith in the Punjab, and they are commonly known as Ranghrheta Sikhs. Ranghar is a term applied to the Rajputs about Delhi who have become Muhammadans; but in Malwa the predatory Hindu Rajputs are similarly styled, perhaps from Rank, a poor man, in opposition to Rana, one of high degree. Ranghrheta seems thus rather a diminutive of Rangghar than a derivative of *rang* (colour) as commonly understood. The Ranghrheta Sikhs are sometimes styled Mazhabi, or of the (Muhammadan) faith, from the circumstance that the converts from Islam are so called, and that many sweepers throughout India have become Muhammadans".

14. The following passage was also reproduced in the above foot-note:—

"The general reluctance of the low-caste Hindu to elevate himself by becoming a Sikh may perhaps be explained by the historical exception of the Mazhabis. These Sikhs, the descendants of converts from the despised Sweeper caste, were welcomed by the Khalsa at a time when they were engaged in a desperate struggle with the forces of Islam. But when the Sikhs dominated the Punjab, they found that the equality their religion promised them existed in theory rather than in fact. They occupied much the same position among the Jat and Khalsa descended Sikhs as their ancestors, the sweepers, enjoyed among Hindus. They were debarred from all privileges and were, at one time, excluded from the army".

15. In my opinion, the material discussed above leaves no doubt that Hindu *Chuhrras* or Balmikis on embracing Sikhism are styled as Mazhabis and I hold accordingly.

16. It follows from the above finding that Shri Mukhtar Singh on embracing Sikhism would not cease to be a member of the Scheduled Caste, for the moment he gets converted to Sikhism, he becomes Mazhabi, which is also one of the castes mentioned in the President's Order, referred to above. In case, however, there is no conversion, Shri Mukhtar Singh would continue to remain a Balmiki Hindu, which is also one of the Scheduled Castes mentioned in the President's Order. In either view of the matter, whether there was a conversion of Shri Mukhtar Singh or not, he was qualified to seek election from the seat reserved for the Scheduled Castes and as such his nomination papers cannot be deemed to have been improperly accepted.

17. It is next contended that Shri Mukhtar Singh filed a false declaration inasmuch as he described himself to be a Mazhabi Sikh instead of Balmiki Hindu in his nomination papers and that consequently there was infraction of the provisions of the Representation of the People Act. In the circumstances, the counsel for the petitioner urges, the nomination papers of Shri Mukhtar Singh should have been rejected. The relevant provision of law, which enjoins the filing of such a declaration is section 33, sub-section (3) proviso (1) of the Representation of the People Act. The proviso runs as under:—

"Provided that in a constituency where any seat is reserved for the Scheduled castes or for the Scheduled Tribes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the Scheduled Castes or of the Scheduled Tribes for which the seat has been so reserved and the declaration specifies the particular caste or tribe of which the candidate is a member and also the area in relation to which such caste or tribe is one of the Scheduled Castes or Scheduled Tribes, as the case may be".

18. The position of Shri Mukhtar Singh is that he embraced Sikhism in the summer of 1953 and as such his declaration filed at the bye-election was correct. The evidence in this respect consists of the statements of Shri Mukhtar Singh (who had to be produced as a witness by the petitioner because Shri Mukhtar Singh had refused to come into the witness-box as his own witness) and R.W.I. Jathedar Kartar Singh. According to Shri Mukhtar Singh, his father was a Hindu *Chuhra* and the *Chuhrras* who believe in Rishi Balmik, style themselves as Balmikis. Shri

Mukhtar Singh was recruited in the Army in the year 1940 or 1941. While being recruited he described himself as a Mazhabi Sikh. Shortly after his recruitment in the Army, he was given *Amrit*. While serving in the Army he was wounded in his leg in the year 1943. He became unconscious and the doctor removed his public hair. According to Shri Mukhtar Singh, he thus became *Patit* and could no longer style himself as a Mazhabi Sikh. He, accordingly, called himself a Balmiki and that was his position at the time of the General Elections. In the summer of 1953, according to him, he took *Amrit* in Gurdwara Badhowal and thus again became a Mazhabi Sikh. R.W.1 Jathedar Kartar Singh has also deposed that Shri Mukhtar Singh was given *Amrit* in Gurdwara Badhowal in the summer of 1953.

19. On the question of conversion of Shri Mukhtar Singh, I find that the order of the Returning Officer, dated 19th August 1953, copy of which is Exh: P.2, tends to show that no plea was raised on behalf of Shri Mukhtar Singh before the Returning Officer that the former had embraced Sikhism in the summer of 1953. No plea was also taken in the written statement of Shri Mukhtar Singh filed before us that he had, in fact, been converted to Sikhism in the summer of 1953. It was only when Shri Mukhtar Singh was ordered to be produced before the Tribunal and his statement was recorded before the framing of issues that he stated that he had taken *Amrit* in the summer of 1953 at Gurdwara Badhowal. It is not clear as to why no such plea was taken in the written statement, if, in fact, there had been a conversion of Shri Mukhtar Singh in the summer of 1953. Shri Mukhtar Singh belongs to village Dharamkot. The evidence of Jathedar Kartar Singh shows that there are two Gurdwaras in Dharamkot. No explanation is forthcoming as to why Shri Mukhtar Singh took *Amrit* not in one of the Gurdwaras in his own village but in the Gurdwara of another village. According to Shri Mukhtar Singh, when he was given *Amrit* at Gurdwara Badhowal, it was Jathedar Kartar Singh, who acted as a Granthi. According, however, to Jathedar Kartar Singh, he only constituted one of the five *pyaras* and that it was Mehr Singh of village Bhindar who acted as the Granthi at the time Shri Mukhtar Singh was given *Amrit*. Jathedar Kartar Singh admits that Mehr Singh and the other four *Pyaras* are alive. None of them, however, has been produced as a witness. As Shri Mukhtar Singh described himself to be a Balmiki Hindu and not a Mazhabi Sikh in his statement, dated 27th March 1953, and there is a presumption of continuity, the onus lay on Shri Mukhtar Singh to prove that he had embraced Sikhism some time between 27th March 1953 and 17th August 1953, when he filed nomination papers. In my opinion, the evidence produced by Shri Mukhtar Singh does not discharge the onus, which lay on him. I, accordingly, hold that on the material on record it is not possible to give a finding that Shri Mukhtar Singh was converted to Sikhism in the summer of 1953.

20. The question, however, is whether the description by Shri Mukhtar Singh of himself as a Mazhabi Sikh instead of Hindu Balmiki in the declaration in the nomination papers should have resulted in the rejection of his nomination papers. In this connection I have already observed above that both Balmiki Hindus as well as Mazhabi Sikhs are members of Scheduled Castes. Shri Mukhtar Singh's failure to prove his conversion to Sikhism would only show that he continued to be a Balmiki Hindu, to which caste he professed to belong in his statement, dated 27th March 1953. As a Balmiki Hindu Shri Mukhtar Singh could certainly seek election from the seat reserved for the Scheduled Castes to the Assembly. In the circumstances, the description by Shri Mukhtar Singh of himself as a Mazhabi Sikh can only be treated as a technical defect, which was not of a substantial character and did not materially affect his nomination papers. Sub-section (4) of section 36 of the Representation of the People Act provides as under:—

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character".

21. In a case reported in 2 Election Law Reports 103, a candidate, who was an Adi-Dravida, which was one of the Scheduled Castes, described himself as a Harijan in his nomination paper for the seat reserved for the Scheduled Castes. Objection was raised to the validity of the aforesaid candidate's nomination paper on the ground that Harijans were not included as one of the Scheduled Castes in the Order of the President. It was held that it was only a technical defect and not of a substantial character and as such was saved by the provisions of section 36 (4) of the Representation of the People Act. The above case is an authority for the proposition that if a member of the Scheduled Caste does not give his real caste in the declaration filed in the nomination paper, and it is found that he is, in fact, a member of the Scheduled Caste, his nomination should not be rejected and the defect in the nomination should be treated as cured by section 36 (4) of the Representation of the People Act.

22. In the present case the Returning Officer held that the description of Shri Mukhtar Singh as a Mazhabi Sikh would not invalidate his nomination paper in view of section 36 (4) of the Representation of the People Act. After giving the matter my earnest consideration I am of the view that the aforesaid provision of law applies to the facts of the present case and that the Returning Officer was justified in accepting the nomination paper of Shri Mukhtar Singh.

23. The matter can be looked at from another angle. It is for the petitioner to show that Shri Mukhtar Singh made a false declaration in his nomination paper. It is true that in view of the presumption of continuity the onus was on Shri Mukhtar Singh to prove that he had been converted to Sikhism. From the mere fact that Shri Mukhtar Singh has failed to produce sufficient and convincing evidence to discharge this onus, it does not necessarily follow that the declaration made by Shri Mukhtar Singh was false. There is no allegation in the petition that Shri Mukhtar Singh was not a Sikh when he filed his nomination papers at the time of bye-election. On the contrary, the petitioner admits in para. 7 (iv) of his petition that he urged before the Returning Officer that Shri Mukhtar Singh was a Sikh, though the petitioner also added that Shri Mukhtar Singh's caste was Balmiki. In view of the above, the petitioner cannot now seriously urge that Shri Mukhtar Singh made a false declaration by describing himself to be a Sikh in the nomination paper. In this connection, I may also state that though religion of a candidate has a bearing in deciding whether he is or is not a member of the Scheduled Castes, the declaration by itself does not require that a candidate should specify his religion in the declaration. In this view of the matter also, the nomination paper of Shri Mukhtar Singh was not liable to be rejected on the ground of his having described himself to be a Sikh in the declaration in the nomination paper.

24. I may also make mention of an argument, which was advanced before us on behalf of respondent No. 2. It was alleged that even if it be held that respondent No. 2 was not qualified to stand for the seat reserved for the Scheduled Castes, he could have been elected to the general seat and that inasmuch as there is nothing on the record to show as to which of the two respondents Nos. 1 and 2 obtained higher number of votes, the election petition should be dismissed. No such plea was raised in the written statement. On the contrary, it was expressly admitted in the written statement of respondent No. 2 that he filed his nomination papers for the seat reserved for the Scheduled Castes and that he was also elected from that seat. In the circumstances, we declined to permit this new plea involving questions of facts to be set up for the first time in arguments.

25. It has also been urged on behalf of the petitioner that Shri Mukhtar Singh had been shifting his position. Shri Mukhtar Singh admits that he was born a Hindu *Chuhra*. When joining the Army, he described himself as a Mazhabi Sikh, even though he had never taken *Amrit* before that and took it only after being recruited in the Army. At the time of the General Elections, Shri Mukhtar Singh described himself to be a Balmiki. When the previous election petition was filed against him, he declared before the Ludhiana Election Tribunal that he was a Balmiki Hindu and did not believe in the ten Gurus. At the time of the bye-election he declared himself to be a Mazhabi Sikh. These facts no doubt tend to show that in the case of Shri Mukhtar Singh, religion is not so much a matter of deep faith and conviction as a quick changing elastic contrivance to suit the convenience and exigency of the moment. In the present petition, however, we are not concerned with the ethical aspect of Shri Mukhtar Singh's conduct but only with the legal issue whether his nomination papers were or were not improperly accepted. On this legal question I have no doubt that his nomination papers were properly accepted. I hold accordingly.

26. The result is that the election petition fails and is dismissed. In the circumstances of the case, we leave the parties to bear their own costs. Counsel's fee Rs. 200.

Dated the 28th July 1955.

(Sd.) HANS RAJ KHANNA, *Chairman*.

I agree.

(Sd.) M. S. PANNUN, *Member*.

28-7-55.

I agree.

(Sd.) MAHARAJ KISHORE, *Member*.

28-7-55.

ANNEXURE A

ORDER

Shri Davindar Singh and Shri Mukhtiar Singh were elected as members of the Punjab Legislative Assembly from Moga Dharamkot Constituency in the bye-election held in August and September, 1953. Shri Rattan Singh, petitioner, who was one of the candidates in that election, has filed the present election petition in which he has sought the relief that the election of Shri Davindar Singh and Shri Mukhtiar Singh should be declared wholly void. In para. No. 8 of the petition it was stated by the petitioner as under:—

"That the result of the bye-election has been materially affected by the improper rejection of the nomination of Shri Massa, respondent No. 10, on a technical ground that the serial number of respondent Shri Massa on the voters' list did not tally with the number entered in the nomination paper. His identity was not in doubt. At the most it was a clerical mistake."

2. Shri Davindar Singh respondent in his written statement stated that the contents of para. No. 8 were insufficient and the petitioner should be asked to give further particular. In his written statement Shri Mukhtiar Singh gave the following reply with regard to the allegations made in para. No. 8 of the petition:—

"Not admitted. The nomination of Shri Massa Singh was rightly rejected and it has in no case effected the result of the election. That the particulars of para. No. 8 are insufficient and very vague to be treated as a ground of attack against the election for improper rejection of respondent No. 10. Election petition does not state, for instance (i) the serial number of the candidate respondent No. 10 as entered in the nomination paper said to have been rejected on technical grounds and the actual roll No. on the voters' list, (ii) names of proposer and seconder and their serial numbers, (iii) the evidence led before the Returning Officer at the time of the scrutiny to prove that the defect is technical or only a clerical error, (iv) any other material put up before the Returning Officer to invoke indulgence and discretion in his favour, (v) and a copy of the order of the Returning Officer in this respect. As the petition stands, the order of the Returning Officer was thoroughly legal and proper and has not in any sense materially affected the result of the bye-election. The order on merits of the Returning Officer is final. The fact that the respondent No. 10 or any of his supporters have not come forward in election petition is by itself a proof of the fact that respondent No. 10 was neither serious nor he had much chance or support and therefore in no case his rejection has resulted in any material effect on the election."

3. In his replication the petitioner stated that the nomination papers of Shri Massa Singh were rejected on grounds of technical defect and not of substantial nature. It was also further stated that the further particulars asked for by the respondent were not strictly material and would be brought before the Tribunal in the course of evidence.

4. Before the Tribunal, could proceed with the hearing of the petition, the petitioner on 3rd July 1954 put in an application in which he stated that in para. No. 8 of the petition the following words may be deleted:—

"That the serial No. of respondent Shri Massa on the voters' list did not tally with the number entered on the nomination paper. His identity was not in doubt."

5. Instead of the above words, the petitioner prayed that the following words may be substituted:—

"That the serial Nos. of respondent No. 10's proposer and seconder as given in the nomination paper were not available in the Electoral Roll then alleged to be in force. Their identity was not in doubt."

6. The petitioner has also put in an affidavit that he was not present in the Court of the Returning Officer at the time of the scrutiny of the nomination paper of Shri Massa Singh. The petitioner further stated in the affidavit that he obtained copies of the relevant papers and came to know after obtaining these

copies that the nomination paper of Shri Massa Singh was rejected, because the number of the proposer and seconder was not available on the electoral roll then in force.

7. The application of the petitioner was resisted by the respondents. The question to be decided is whether the proposed amendment in para. No. 8 of the petition should be permitted or not.

8. The question splits itself into two parts. The first point to be determined is whether an election petition can at all be allowed to be amended. The second point is whether in the circumstances of the present case, the amendment sought for should be allowed.

9. The question whether an election petition can at all be allowed to be amended is not free from difficulty and would have to be determined by reference to the provisions of the Representation of the People Act and the previous law on the subject. The learned counsel for the petitioner has relied upon sub-section (2) of section 90 of the Representation of the People Act in order to show that an election petition can be amended. The material part of section 90 sub-section (2) runs as under:—

“Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits”.

10. According to the learned counsel, the provisions of O. 6, R. 17, C.P.C., which deal with the amendment of pleadings, be applicable to the election petitions and, therefore, in view of the above sub-section, the election petition can also be amended.

11. A perusal of the above sub-section makes it clear that the provisions of the Civil Procedure Code have been made applicable to the trial of the election petitions, as nearly as may be, subject to the provisions of the Act and of any rules made thereunder. It is now to be seen whether there are any provisions of the Representation of the People Act, which go to show that the provisions with regard to O. 6, R. 17, C.P.C., have not been made applicable to the election petitions. According to section 83 of the Representation of the People Act, an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed and verified by the petitioner in accordance with the Civil Procedure Code. The petition should also be accompanied by a list of particulars of corrupt or illegal practice, which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the Commission of each practice. Sub-Section (3) of section 83 runs as under:—

“The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition”.

12. A perusal of sub-section (3) of section 83 makes it clear that so far as list of particulars of corrupt or illegal practices is concerned, the Tribunal has powers to allow such amendments as it deems proper and just. The question in the circumstances arises that if it was the intention of the legislature to confer a power of amendment of the main petition on the Tribunal, why was sub-section (3) confined only to amendment of list of particulars and not made applicable both to the allegations in the petition as well as the list of particulars. Section 83 of the Act deals both with the main petition as well as particulars of corrupt or illegal practices and the fact that the legislature has expressly stated that the particulars can be amended, in cases considered just and proper by the Tribunal, leads by inference to the conclusion that the main petition cannot be allowed to be amended.

13. The matter can be looked at from another angle and still one arrives at the same conclusion. It was laid down in a chain of English authorities that so far as election petitions are concerned, the same cannot be allowed to be amended and only the particulars can be amended. Reference in this connection may be made to *Aldrige Vs. Hurst* 1 C.P.D. 410, *Maude Vs. Lowly* (1874), L.R. 9 C.P. 165;

29 I.T. 924; and Clark Vs. Wallond 52 L.J.Q. B. 321. All these authorities are referred to at page 387 in the Law of Elections and Election petitions in India by Nanak Chand Pandit, First edition. The legislature was presumably aware of those authorities and still the only provisions that the legislature expressly made was with regard to the amendment of particulars, but no provision was made as such for amendment of the main election petition. This would tend to show that the legislature did not intend to make any provision for the amendment of the main election petition.

14. Before the enactment of the Representation of the People Act there existed Rule 35, which directed the Commissioners to enquire into the petition as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code of 1908 to the trial of suits. The above rule was referred to in Saharanpur case reported in Hammond's Indian Election Petitions 197. Dealing with this question the Tribunal observed as under:—

"Finally, it is claimed that rule 35 directs the Commissioners to enquire into petitions as nearly as may be in accordance with procedure applicable under the Civil Procedure Code, 1908, to the trial of suits, and that we ought therefore to allow the petitioner at this stage to amend his petition and supply the missing particulars now. The petitioners counsel professes to rely on Order 6, Rule 17, C.P.C. We hold, however, that rule 35 only makes the Civil Procedure Code applicable to the conduct of the enquiry and not to the petition. In the case of an ordinary civil suit the trial court is empowered to accept, reject, or at any time amend the plaint. This is not so with any election petition, which under rule 30 can be accepted only by the Governor within a limited period of 14 days from the date of publication of the result of the election. Further, there is no provision anywhere in the Act or the rules for the amendment of a petition. Indeed, any such amendment appears contrary to the whole tenor and spirit of the rules. The short time limit permitted and the insistence in rule 31 on the furnishing at once of the full particulars are evidently intended to insure that the returned candidate shall without any delay be informed of the exact nature of the case against him and of the charges which he will have to meet. To allow amendments and additions would be to defeat this very salutary provision".

15. In my opinion, the fact that the legislature made no express provision with regard to amendment of election petitions in spite of the previous judicial pronouncements that the election petitions cannot be amended, shows that the legislature did not desire the petitions to be amended. The further fact that the legislature enacted section 90 sub-section (2), which was practically identical with the old rule 35, would show that the legislature approved of the interpretation placed on the aforesaid rule. Reference in this connection may be made to A. I. R. 1951 Supreme Court 155. In that case Their Lordships of the Supreme Court were considering section 7 of Bihar Money-lenders (Regulation of Transactions) Act. Their Lordships were of the view that section 7 of the Act was obscure and ill drawn. The section was, however, re-enacted. Their Lordships held as under:—

"If the interpretation does not carry out the intentions of the framers of the Act by reason of unhappy or ambiguous phrasing, it is for the legislature to intervene. But so far from doing so, it has acquiesced, during all these years, in the construction, which the Patna H. C. has been placing upon the section from the very next year after the enactment of the Statute. Having regard to the great obscurity in the language employed in the relevant provisions and the inaction of the Legislature, it is, in our opinion, legitimate to infer that the view expressed by the Patna H. C. is in accord with the intention of the Legislature."

16. In the above context reference may also be made by section 92 of the Act, which runs as under:—

"The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters:—

(a) Discovery and inspection.

(b) Enforcing the attendance of witnesses, and requiring the deposit of their expenses;

- (c) Compelling the production of documents;
- (d) Examining witnesses on oath;
- (e) Granting adjournments;
- (f) Reception of evidence taken on affidavit; and
- (g) Issuing commissions for the examination of witnesses, and may summon and examine *suo motu* any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898)".

17. The above section gives list of some of the powers of a Civil Court, which can be exercised by an election tribunal. In my opinion, if the Legislature intended to confer a power of amendment of the petition, a provision could have been made in the above section also to that effect.

18. I shall now deal with some of the cases that deal with the question of amendment of the election petitions. In 1953 Bombay 293 Their Lordships of the Bombay High Court were considering the question of the amendment of the petition and the addition of a party; it was held that the Tribunal had the power to amend the petition under sub-section (2) of section 90 and to add a party. The amendment made in the aforesaid case was, however, only in the verification. In 1954 Madras 336 the Tribunal had allowed amendment of the verification. It was held that the Tribunal had an inherent jurisdiction to permit clerical and formal amendments and that the Election Tribunal had exercised a sound discretion in permitting the verification to be amended. It was further observed that it was unnecessary to go into the question whether the Tribunal had jurisdiction to order an amendment of the petition, as the amendment in that case was of a purely formal character. It may be noticed that in both the cases mentioned above, the amendments were of a purely formal character, as they related only to the amendment of verification and did not alter the allegations made in the body of the petition. In the Madras case it was expressly stated that it was unnecessary to go into the question whether the Tribunal had jurisdiction to order an amendment of petition.

19. The question arose in case reported in 1954 Mysore 102. After discussing sections 90 and 92, it was observed as under:—

"The failure to so embody 0.6 and the rules thereunder and in particular R.17 seems to make it clear that the Legislature did not intend the Election Tribunal to make use of the said provision to amend the petition sent to it for disposal by the Election Commission.

"This view receives corroboration from Section 83 (3) which specifically gives powers to the Election Tribunal to allow the particulars included in the said list amended or order such further or better particulars in regard to any matter referred to therein required to be furnished by the petitioner under Section 83(2). The Legislature which thought it fit to specifically empower the Election Tribunal to amend the list required to be furnished by Section 83(2) would not, and could not be deemed to, have forgotten to specifically empower the Election Tribunal to amend the election petition itself if actually it intended to so empower the Election Tribunal. It would, if that was the intention, have referred to and embodied 0.6, R. 17, Civil P.C. in the Representation of the People Act. The amendment by the Election Tribunal of the Election Petition sent to it by the Election Commission must therefore be held to be an amendment made without jurisdiction".

20. Dealing with the above mentioned Bombay case, it was observed as under:—

"The Bombay High Court was obviously not invited to consider the effects of Section 83(3) under which the only amendment permitted is the amendment of the particulars including the list attached to the election petition".

21. An appeal was taken to the Supreme Court against the above mentioned Mysore case. The Supreme Court appeal is reported in A.I.R. 1954 Supreme Court 440. The appeal was accepted on another point and no specific finding

was given on the point whether the Tribunal had power to permit amendment. It was observed as under:—

"Coming now to the question of amendment, the High Court, after an elaborate discussion of the various provisions of the Act, came to the conclusion that the Election Tribunal which is a special court endowed with special jurisdiction has no general power of allowing amendment of the pleadings, and that the express provision of section 83(3) of the Act, which empowers the Tribunal to allow amendments with respect to certain specified matters, impliedly excludes the power of allowing general amendment as is contemplated by Order 6 Rule 17 of the Civil Procedure Code. Here again the discussion embarked upon by the High Court seems to us to be unnecessary and uncalled for.

"The only amendment applied for by the petitioner was a modification in the prayer clause by insertion of any alternative prayer to the original prayer in the petition. No change whatsoever was sought to be introduced in the actual averments in the petition and the original prayer which was kept intact was repeated in the application for amendment. The alternative prayer introduced by the amendment was not eventually allowed by the Tribunal which granted the prayer of the petitioner as it originally stood. In these circumstances the mere fact that the Tribunal granted the petitioners application for amendment becomes altogether immaterial and has absolutely no bearing on the actual decision in the case. We are unable to hold therefore that the Tribunal acted without jurisdiction in respect to either of these two matters".

22. In Election Petition Rama Reddi Vs. Chidanandam and others, decided by the Election Tribunal, Bellary, reported in Election Law Reports, Volume I, Part IV, page 373, it was held as under:—

"An election petition can be allowed to be amended even after the period of limitation for filing the petition has expired, when the amendment does not introduce any new cause of action or change the nature of the case or the relief asked for".

23. On the contrary, it has been laid down in Election Law Reports, Volume II, Part II, page 163, as under:—

"The only provision in the Representation of the People Act, 1951, which enables a petitioner to amend an election petition is clause (3) of section 83 which relates to amendment of particulars of corrupt practices mentioned in the list. Apart from this, the Tribunal has no power to allow amendment of an election petition."

24. After giving the matter my anxious consideration, I am of the view that there is no power in the Election Tribunal to permit the amendment of the election petition. The amendment sought for cannot consequently be allowed. The petitioner's application, therefore, is dismissed. In the circumstances, I leave the parties to bear their own costs, in this application.

The 6th August 1954

(Sd.) HANS RAJ KHANNA, *Chairman.*

I agree.

(Sd.) MAHARAJ KISHORE, *Member.*

6-8-1954.

I agree.

(Sd.) M. S. PANNUN, *Member.*

6-8-1954.

Announced to the parties and their counsel.

(Sd.) H. R. KHANNA, *Chairman.*

(Sd.) MAHARAJ KISHORE, *Member.*

(Sd.) M. S. PANNUN, *Member.*

ANNEXURE B

ORDER

In this petition the following preliminary issues were framed on the objection of respondents Nos. 1 and 2:—

1. Does the petition not comply with the provisions of section 83 of the Representation of the People Act and as such is liable to be dismissed for the reasons stated in para 1 (a) of the preliminary objections in the written statement of respondent No. 2?
2. Is the petition not in order on the ground that it does not allege disqualification, want of qualification or defect in nomination papers of respondent No. 2?
3. Does the petition not disclose a cause of action?
4. Are the particulars of para 8 insufficient and vague?

2. No evidence has been adduced by the respondents in support of these issues. The petitioner has put in certified copies and led no other evidence on the issues. We have heard the arguments of the counsel for the parties and the following are our findings on the different issues:—

ISSUES NOS. 1, 2 AND 3

3. The counsel for the respondents 1 and 2 has taken issues 1 to 3 together as, according to him, these issues cover the same ground. The contention of the learned counsel is that the petitioner has not given full particulars in the petition as to why the nomination papers of respondent No. 2 should have been rejected. We find that the petitioner has stated in the petition that respondent No. 2 gave a false declaration with regard to his religion and caste at the time of putting in nomination papers and that for that reason the nomination papers of respondent No. 2 should have been rejected. The particulars of that declaration have been given in the petition and it has also been stated in what respect it is false. According to the petitioner, the improper acceptance of the nomination papers of respondent No. 2 has materially affected the result of the election. In our opinion, the allegations made in the petition substantially comply with the requirements of law. It would, of course, have to be seen while deciding the petition on merits whether the allegations made by the petitioner constitute sufficient ground for setting aside the election. The petition, as it stands, discloses a cause of action. We may also state that the petitioner has not challenged the election of the respondents on the grounds of any corrupt or illegal practice. Had he done so, he would have been bound to give a list of particulars as required by Section 83 sub-section (2) of the Representation of People Act. The present petition seeks to challenge the election of respondents Nos. 1 and 2 on two grounds only, namely, the improper acceptance of the nomination papers of respondent No. 2 and the improper rejection of the nomination papers of Shri Massa Singh, respondent No. 10. In a case like the present there is no statutory requirement for the petitioner to give a separate list of particulars. All that the law enjoins upon him is to state concisely the material facts on account of which, according to him, there has been improper acceptance or rejection of the nomination papers, *vide* sub-section (1) of section 83 of the Act. A perusal of paras 7 and 8 of the petition shows that so far as the above requirement is concerned, the petition is in order and according to law.

4. We, therefore, see no force in the pleas covered by issues Nos. 1 to 3 of respondents Nos. 1 and 2.

ISSUE No. 4

5. No arguments have been addressed before us by the learned counsel for the respondents on this issue. The objection covered by the issue is not pressed.

6. The preliminary issues are accordingly decided against respondents Nos. 1 and 2. We make no order as to costs with regard to our decision on the preliminary issues.

7. Before framing issues on merits, we would like to record the statement of Shri Mukhtar Singh, respondent No. 2. We, therefore, direct that Shri Mukhtar-

Singh, respondent No. 2, should appear in person before the Tribunal on 13th November 1954.

Announced.

The 30th October 1954.

(Sd.) H. R. KHANNA, *Chairman.*

(Sd.) MAHARAJ KISHORE, *Member.*

(Sd.) M. S. PANNUN, *Member.*

ANNEXURE C

ORDER

Shri Davindar Singh, respondent No. 1, and Shri Mukhtar Singh, respondent No. 2, were elected as Members of the Punjab Legislative Assembly in a bye-election. Shri Rattan Singh petitioner, who was one of the candidates in that election, thereupon filed the present election petition, in which it was prayed that the election of Shri Davindar Singh and Shri Mukhtar Singh respondents should be declared wholly void. In para 8 of the petition it was stated as under:—

“That the result of the bye-election has been materially affected by the improper rejection of the nomination of Shri Massa, respondent No. 10, on a technical ground that the serial number of respondent Shri Massa on the voters’ list did not tally with the number entered in the nomination paper. His identity was not in doubt. At the most it was a clerical mistake”.

2. After written statements had been filed by the respondents and replication had been put in by the petitioner, the latter on 3rd July 1954 put in an application in which he stated that in para 8 of the petition the following words may be deleted:—

“That the serial number of respondent Shri Massa on the voters’ list did not tally with the number entered on the nomination paper. His identity was not in doubt.”

3. It was prayed that instead of the above words, the following words may be substituted:—

“That the serial Nos. of respondent No. 10’s proposer and seconder as given in the nomination paper were not available in the Electoral Roll then alleged to be in force. Their identity was not in doubt”.

4. The application of the petitioner was resisted by respondents Nos. 1 and 2. As per order, dated 6th August 1954, we held that there was no power in the Election Tribunal to permit the amendment of the election petition and that the amendment sought for could not be allowed. The petitioner’s application was, accordingly, dismissed.

5. Some preliminary issues were framed and were disposed of, as per order, dated 30th October 1954. Shri Nachittar Singh respondent No. 8, was served for 27th March 1954, but no appearance was put on his behalf on that date or on subsequent hearings till 30th October 1954. He put in an application on 30th October 1954 that he could not take part in the proceedings earlier because of family affairs and other unavoidable reasons. He also put in a written statement along with the application. In the aforesaid written statement Shri Nachittar Singh admitted all the allegations of the petition except those in para 8. As regards that para, it was stated that the result of the election had been materially affected by the improper rejection of the nomination paper of Shri Massa, respondent No. 10, on a technical ground of unsubstantial character, viz., that the serial number of the proposer and seconder of respondent No. 10, as given in the nomination paper, were not available in the Electoral Roll then in force.

6. Notice of the application of Shri Nachittar Singh, respondent No. 8, was given to the other parties. It was not disputed before us that respondent No. 8 could join the proceedings on that stage. It was then ordered that the point whether respondent No. 8 could file a written statement urging a new ground for setting aside the election, which had not been taken up in the election petition, should be decided after an issue on that point had been framed. At the time the

issues were framed, the learned counsel for the petitioner stated that despite the fact that his application for amendment of the petition had been rejected, the petitioner was still entitled to lead evidence to show that the nomination papers of Shri Massa respondent were improperly rejected on the ground stated in the application for amendment of the petition. Issues were thereafter framed, out of which issues Nos. 4 and 6 which are material for the purpose of the present order, are as under:—

4. Can respondent No. 8 urge a new ground for setting aside the election, which has not been originally taken in petition.
6. Can the petitioner lead evidence and claim relief on grounds, which have not been originally stated in the petition and for which the application of the petitioner for amendment has been refused?

ISSUE No. 4

7. The resume of facts, given above, show that the grounds urged by Shri Nachittar Singh, respondent No. 8, in his written statement for setting aside the election are precisely the same, which the petitioner sought to introduce by way of amendment in the election petition. Nachittar Singh respondent did not put in appearance on the date for which he was served and on the hearings of the petition subsequent to that. It was only after the application of the petitioner for amendment of the election petition had been rejected, that Nachittar Singh put in a written statement in which he urged the ground for setting aside the election, which the petitioner had tried unsuccessfully to get introduced in the election petition by way of amendment. The learned counsel for Shri Nachittar Singh has argued that Shri Nachittar Singh having been impleaded as a respondent, is entitled to put in a written statement and urge any ground, which he considers proper for setting aside the election in the present petition. It is urged that the election of the respondents can be set aside on the facts stated not only by the petitioner, but on the grounds also mentioned by persons, who are impleaded as co-respondents along with the successful candidates. In my opinion, this contention is not well founded. Section 31 of the Representation of the people Act, hereafter referred to as the Act, says that an election petition calling in question any election may be presented to the Election Commission within such time as may be prescribed. Rule 119 framed under the Act prescribes the period of limitation for presenting an election petition. Section 83 of the Act provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies. It is further stated that the petition should be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice, including as full a statement as possible as to the names of the part alleged to have committed corrupt or illegal practice and the date and place of the commission of each practice. Sub-section (3) of the above section provides that the Tribunal may, at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to there-in to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition.

8. A perusal of the above provisions of law shows that a person challenging an election has to file an election petition within the prescribed time and he has to state in the petition the grounds, on which he seeks to set aside the election. These provisions of law have been enacted so that a successful candidate should know the grounds on which his election is sought to be set aside. The setting aside of an election is a very serious matter and the law contemplates that the elected candidate should know at a very early stage the grounds on which his election is being assailed. The law with regard to setting forth all the grounds for setting aside the election in the election petition is so strict that in a very large number of cases it has been laid down that the election petition can not be amended and no new grounds for setting aside the election can be inserted after the filing of the election petition. In the circumstances, in my opinion, a respondent, who has been impleaded as a proforma party, can not be permitted to enlarge the scope of election petition by setting forth new facts in his written statement. To permit him to do so, would result not only in setting aside an election on a ground, which was never originally pleaded in the petition, but it would have the effect of nullifying to a considerable extent the provisions of the period of limitation prescribed by rule 119. This course would also tantamount to treating the written statement of a proforma respondent as another election petition, without that respondent complying with the provisions of limitation and those relating to deposit of money. Such a course would run counter to the principle

underlying the different provisions of the Election Law and the Tribunal, would not be justified in countenancing that. On page 401 of the law of Elections and Election petition by Nanak Chand, 1951 Edition, it has been laid down as under:—

“The evidence should be confined to the allegations in the petition and more particularly to the points at issue”.

9. The observation is based on an English case reported in 4 O M & H at 175.

10. In a case reported in A.I.R. 1954 Vindhya Pradesh 44, the headnote reads as under:—

“An election petition once filed cannot be amended; only particulars already filed can be amended. An Election Tribunal cannot, therefore, allow a petition and set aside the election on a ground not taken by the petitioner himself. The decision of the Tribunal is erroneous in law on the face of it and is liable to be quashed upon a writ of certiorari”.

11. In a case reported in III Election Law Reports 393 a similar question arose for decision. It was observed by the majority as under:—

“The respondents Nos. 4, 6, 9 and 12 in their written statement not only support the petition but also allege certain illegalities and irregularities on the part of the returned candidate which have not been alleged by the petitioner himself. The petitioner's learned counsel relies on Order VIII, Rule 2 of the Civil Procedure Code, and contends that a respondent who has been called upon to file a written statement, can take all the pleas which are within his knowledge and which can be taken by a defendant in a suit. But the Election Law is a special law and under section 80 of the Representation of the People Act, 1951, an election can only be challenged by the presentation of a petition within the prescribed period. The act does not contemplate the challenging of an election by means of a written statement by a respondent after the expiry of the prescribed period. The analogy of the Civil Procedure Code cannot, therefore, be imported into the Election Law and the petitioner cannot be allowed to raise new ground of attack through some of the respondents by means of written statements, specially when the petitioner himself cannot do so by amending the petition with the introduction of allegations. The Tribunal, therefore, finds that the respondents aforesaid cannot support the petition on the grounds of any illegality or irregularity not alleged by the petitioner himself”.

12. The learned counsel for respondent No. 8 has referred to a case *Sh. Mohammad Sadiq Vs. Dr. Saifuddin Kitchlew* in Volume II Doabia Indian Election Cases page 117. Reliance is placed on the following passage on page 120:—

“It remains to consider whether his declaration that it was *haram* to vote for a Unionist Party candidate constitutes a corrupt practice. A point of importance to note is that no such allegation was contained in the petition. There, it was alleged only that the Maulana made his audience take oaths to vote for Sheikh Hissam Ud Din, and used spiritual threats against persons who did not vote for him. There is authority to the effect that where a returned candidate, who is a respondent, himself admits the commission of a corrupt practice, the commissioners may find that he was guilty of such corrupt practice even though it was not specifically alleged in the petition, *vide* the Rangoon West (G.U.) 1926 Case (Hammond's Election Cases, 1936, page 905) and the Bareilly City (N.M.U.) 1924 Case (Hammond's Election Cases, 1936, page 127). We consider that there is no material difference between a case where an admission of this kind is made by a respondent and one where it is made by an agent of an unsuccessful candidate who has been named in the petition, so far as concerns the recording of a finding that such corrupt practice has been committed, and we, accordingly, proceed to examine the question whether the Maulana's statement that to vote for Unionist Party candidate is *haram* constitutes the corrupt practice of undue influence.”

13. A perusal of the above case would show that the authorities, which are cited in the above case, were those which related to admissions made by successful candidates in their written statements. No authority was cited in that case to show

that the grounds raised by unsuccessful candidates, who had also been impleaded as respondents, could form the basis of setting aside an election. It may also be stated that in the above mentioned case certain admissions, which were incriminating to Sheikh Hissam Ud Din respondent, who was one of the unsuccessful candidates, had been made by his agent and the Tribunal held that those admissions could be taken into consideration for setting aside the election. The observations only dealt with the question of admissions made by a candidate or his agent against that candidate and not with other allegations. The above observations, in the circumstance, should be deemed to have been made in view of its particular facts, and cannot afford a precedent for the present case, when the pleas raised by respondent No. 8 are not in the form of any admission incriminating to himself, but only is an attempt to introduce in the pleadings what the petitioner failed to get incorporated in his petition by way of amendment. Further, I am of the view that if the above case is to be treated as laying down a precedent for setting aside an election on a ground not raised by the petitioner, but urged only by a proforma respondent in that case, for the reasons discussed above, I respectfully disagree and hold that the election cannot be set aside on a ground not urged in the petition and set up only in the written statement of respondent other than a successful candidate.

14. I may also state that para 4 of the petition, which is admitted by the parties, shows that respondent No. 8 belongs to that category of candidates, whose nomination papers were either rejected or who withdraw their candidature before the actual polling.

15. After considering the facts of the present case and the law on the subject, I am of the view that respondent No. 8 cannot urge a new ground for setting aside the election, which had not been originally taken in the election petition. I, therefore, decide issue No. 4 against respondent No. 8.

ISSUE No. 6

16. The principle is well established that a party must prove the case as set forth in its pleadings. In Civil cases a plaintiff cannot be permitted to depart from his plaint and claim relief on facts not stated by him in the plaint. This rule also applies to election petitions. The difference only is that in the case of election petitions it has to be enforced more strictly, as is clear from the discussion under issue No. 4. The present petitioner, in the circumstances, cannot be permitted to seek relief on grounds not urged by the petitioner in the original petition. The petitioner applied for amendment of his petition but his application for amendment was dismissed. It is, in my opinion, not open to the petitioner to seek relief on facts, which he wanted to urge by way of amendment but which he was not permitted to do.

17. The learned counsel for the petitioner has urged that the ground incorporated in para 8 of the petition is that the result of the election has been materially affected by improper rejection of nomination papers of Shri Massa, respondent No. 10, on a technical ground and that it was not necessary for him to give the further detail "that the serial number of respondent Shri Massa on the voters' list did not tally with the number entered in the nomination paper. His identity was not in doubt. At the most it was a clerical mistake". It is urged that the petitioner having admitted in his application for amendment that aforesaid allegation that the serial number of respondent Shri Massa on the voters' list did not tally with the number entered in the nomination paper, was not correct, the effect of the application for amendment is that the words mentioned above in inverted commas stand deleted, but the ground that the result of the election had been materially affected by the improper rejection of nomination paper of Shri Massa, respondent No. 10, on a technical ground stood intact. The petitioner, the counsel concludes, can, therefore, still lead any evidence in support of his allegation that the nomination paper of Shri Massa respondent had been improperly rejected. In my opinion, the above contentions of the learned counsel are not well founded. Though para 8 of the petition does urge that the result of the election has been affected by improper rejection of nomination paper of Shri Massa, it also states the grounds on account of which, according to the petitioner, the nomination papers of Shri Massa were rejected. According to para 8 of the petition, the ground, on which the nomination papers of Shri Massa were rejected, was that the serial number of respondent Shri Massa on the voters' list did not tally with the number entered in the nomination paper. The petition shows that it was that ground, which was challenged by the petitioner. According to the application for amendment, the ground of rejection of nomination papers of Shri Massa was that the serial numbers of the proposer and seconder of Shri Massa, respondent No. 10, as

given in the nomination paper, were not available in the Electoral Roll then alleged to be in force. It is this latter ground, which the petitioner now seeks to challenge. In my opinion the petitioner cannot be permitted to challenge this ground, when he did not do so in the original petition. In the original petition he impugned certain facts, which he believed to be existing, but which, in fact, did not exist. The petitioner having challenged certain imaginary facts, cannot on discovery of real facts, be deemed to have challenged them also in the petition.

18. Nor is there force in the contention of the learned counsel that the effect of merely putting in the application for amendment is to delete from para 8 of the petition the words "that the serial number of respondent Shri Massa on the voters' list did not tally with the number entered on the nomination paper. His identity was not in doubt", while retaining the allegation that there had been improper rejection of nomination paper of Shri Massa. The allegations in para 8 of the petition have to be taken as a whole and the Tribunal is not justified, in my opinion, in amputating the allegations and to retain a part of it and to reject the rest. Further, the application for amendment cannot be deemed to have resulted in the deletion of the words, mentioned above, for deletion can only occur if the application for amendment is allowed. Indeed it was one of the prayers of the petitioner in the application for amendment that the above words should be deleted. When the application was rejected, the words mentioned above should be deemed to stand and form an integral part of para 8 of the petition.

19. Lastly, it is urged on behalf of the petitioner that the allegations in para 8 of the petition are the subject matter of an order and as the real facts can be discovered by a perusal of that order, the petitioner should be permitted to place full facts before the Tribunal. In my opinion, the mere circumstance that a perusal of the order would prove the facts as alleged in the application for amendment, cannot weigh with the Tribunal to permit evidence of those allegations to be led. In every case, whenever, an application for amendment is made, the petitioner does so on the implied undertaking to adduce evidence in support of the allegations, which are the subject matter of amendment, but that fact is no ground for accepting the application for amendment. In principle it makes no difference whether the additional allegations can be proved by leading oral evidence or whether those additional facts can be proved by placing on record documentary evidence including orders and their copies.

20. I, therefore, hold that the petitioner cannot be permitted to lead evidence and claim relief on grounds, which have not been originally stated in the petition and for which the application of the petitioner for amendment has been refused. I, accordingly decide issue No. 6 against the petitioner. I make no order as to costs of this order.

The 31st December 1954

(Sd.) HANS RAJ KHANNA, *Chairman.*

I agree.

(Sd.) MAHARAJ KISHORE, *Member.*

31-12-54.

I agree.

(Sd.) M. S. PANNUN, *Member.*

31-12-54.

Announced to the parties and their counsel.

The 31st December 1954.

(Sd.) HANS RAJ KHANNA,—*Chairman.*

(Sd.) MAHARAJ KISHORE, *Member.*

(Sd.) M. S. PANNUN, *Member.*

[No. 82/2/54/8910.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy.*